

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 616

BY SENATORS BOSO, ASHLEY, BLAIR, KIRKENDOLL,

SYPOLT, WALTERS, YOST AND FERNS

[Introduced February 17, 2016;

Referred to the Committee on the Judiciary; and then to
the Committee on Finance.]

1 A BILL to amend and reenact §23-4-1 of the Code of West Virginia, 1931, as amended, relating
2 to workers compensation disability and death benefits; defining “professional firefighter”;
3 and requiring the Insurance Commissioner to study the effects of the rebuttable
4 presumptions created on the premiums charged for workers' compensation for
5 professional firefighters and the overall impact of the risk management programs, wage
6 replacement, premium calculation for the cost providing coverage and the separation of
7 professional firefighter functions from nonactive, nonfirefighting or support functions in
8 volunteer fire departments.

Be it enacted by the Legislature of West Virginia:

1 That §23-4-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted
2 to read as follows:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

**'23-4-1. To whom compensation fund disbursed; occupational pneumoconiosis and other
occupational diseases included in “injury” and “personal injury”; definition of
occupational pneumoconiosis and other occupational diseases; rebuttable
presumption for cardiovascular injury and disease or pulmonary disease for
firefighters.**

3 (a) Subject to the provisions and limitations elsewhere in this chapter, workers
4 compensation benefits shall be paid the Workers Compensation Fund, to the employees of
5 employers subject to this chapter who have received personal injuries in the course of and
6 resulting from their covered employment or to the dependents, if any, of the employees in case
7 death has ensued, according to the provisions hereinafter made: *Provided*, That in the case of
8 any employees of the state and its political subdivisions, including: Counties; municipalities; cities;
9 towns; any separate corporation or instrumentality established by one or more counties, cities or
10 towns as permitted by law; any corporation or instrumentality supported in most part by counties,

11 cities or towns; any public corporation charged by law with the performance of a governmental
12 function and whose jurisdiction is coextensive with one or more counties, cities or towns; any
13 agency or organization established by the Department of Mental Health for the provision of
14 community health or mental retardation services and which is supported, in whole or in part, by
15 state, county or municipal funds; board, agency, commission, department or spending unit,
16 including any agency created by rule of the Supreme Court of Appeals, who have received
17 personal injuries in the course of and resulting from their covered employment, the employees
18 are ineligible to receive compensation while the employees are at the same time and for the same
19 reason drawing sick leave benefits. The state employees may only use sick leave for nonjob-
20 related absences consistent with sick leave use and may draw workers compensation benefits
21 only where there is a job-related injury. This proviso shall not apply to permanent benefits:
22 *Provided, however,* That the employees may collect sick leave benefits until receiving temporary
23 total disability benefits. The Division of Personnel shall promulgate rules pursuant to article three,
24 chapter twenty-nine-a of this code relating to use of sick leave benefits by employees receiving
25 personal injuries in the course of and resulting from covered employment: *Provided further,* That
26 in the event an employee is injured in the course of and resulting from covered employment and
27 the injury results in lost time from work and the employee for whatever reason uses or obtains
28 sick leave benefits and subsequently receives temporary total disability benefits for the same time
29 period, the employee may be restored sick leave time taken by him or her as a result of the
30 compensable injury by paying to his or her employer the temporary total disability benefits
31 received or an amount equal to the temporary total disability benefits received. The employee
32 shall be restored sick leave time on a day-for-day basis which corresponds to temporary total
33 disability benefits paid to the employer: *And provided further,* That since the intent of this
34 subsection is to prevent an employee of the state or any of its political subdivisions from collecting
35 both temporary total disability benefits and sick leave benefits for the same time period, nothing
36 in this subsection prevents an employee of the state or any of its political subdivisions from

37 electing to receive either sick leave benefits or temporary total disability benefits, but not both.

38 (b) For the purposes of this chapter, the terms

39 (1) "Injury" and "personal injury" include occupational pneumoconiosis and any other
40 occupational disease, as hereinafter defined, and workers compensation benefits shall be paid to
41 the employees of the employers in whose employment the employees have been exposed to the
42 hazards of occupational pneumoconiosis or other occupational disease and in this state have
43 contracted occupational pneumoconiosis or other occupational disease, or have suffered a
44 perceptible aggravation of an existing pneumoconiosis or other occupational disease, or to the
45 dependents, if any, of the employees, in case death has ensued, according to the provisions
46 hereinafter made: *Provided*, That compensation shall not be payable for the disease of
47 occupational pneumoconiosis, or death resulting from the disease, unless the employee has been
48 exposed to the hazards of occupational pneumoconiosis in the State of West Virginia over a
49 continuous period of not less than two years during the ten years immediately preceding the date
50 of his or her last exposure to such hazards, or for any five of the fifteen years immediately
51 preceding the date of his or her last exposure. An application for benefits on account of
52 occupational pneumoconiosis shall set forth the name of the employer or employers and the time
53 worked for each. The commission may allocate to and divide any charges resulting from such
54 claim among the employers by whom the claimant was employed for as much as sixty days during
55 the period of three years immediately preceding the date of last exposure to the hazards of
56 occupational pneumoconiosis. The allocation shall be based upon the time and degree of
57 exposure with each employer; and

58 (2) "Professional firefighter" means a member of a fire department that has received not
59 less than the minimum education and training as provided in section five-d, article three, chapter
60 twenty-nine of this code and performs functions for suppressing fire, performing rescue,
61 controlling hazardous material releases and other related duties regardless of compensation as
62 a volunteer or career firefighter.

63 (c) For the purposes of this chapter, disability or death resulting from occupational
64 pneumoconiosis, as defined in subsection (d) of this section, shall be treated and compensated
65 as an injury by accident.

66 (d) Occupational pneumoconiosis is a disease of the lungs caused by the inhalation of
67 minute particles of dust over a period of time due to causes and conditions arising out of and in
68 the course of the employment. The term "occupational pneumoconiosis" includes, but is not
69 limited to, such diseases as silicosis, anthracosilicosis, coal workers pneumoconiosis, commonly
70 known as black lung or miners asthma, silicotuberculosis (silicosis accompanied by active
71 tuberculosis of the lungs), coal workers pneumoconiosis accompanied by active tuberculosis of
72 the lungs, asbestosis, siderosis, anthrax and any and all other dust diseases of the lungs and
73 conditions and diseases caused by occupational pneumoconiosis which are not specifically
74 designated in this section meeting the definition of occupational pneumoconiosis set forth in this
75 subsection.

76 (e) In determining the presence of occupational pneumoconiosis, X-ray evidence may be
77 considered, but shall not be accorded greater weight than any other type of evidence
78 demonstrating occupational pneumoconiosis.

79 (f) For the purposes of this chapter, occupational disease means a disease incurred in the
80 course of and resulting from employment. No ordinary disease of life to which the general public
81 is exposed outside of the employment is compensable except when it follows as an incident of
82 occupational disease as defined in this chapter. Except in the case of occupational
83 pneumoconiosis, a disease shall be considered to have been incurred in the course of or to have
84 resulted from the employment only if it is apparent to the rational mind, upon consideration of all
85 the circumstances: (1) That there is a direct causal connection between the conditions under
86 which work is performed and the occupational disease; (2) that it can be seen to have followed
87 as a natural incident of the work as a result of the exposure occasioned by the nature of the
88 employment; (3) that it can be fairly traced to the employment as the proximate cause; (4) that it

89 does not come from a hazard to which workmen would have been equally exposed outside of the
90 employment; (5) that it is incidental to the character of the business and not independent of the
91 relation of employer and employee; and (6) that it appears to have had its origin in a risk
92 connected with the employment and to have flowed from that source as a natural consequence,
93 though it need not have been foreseen or expected before its contraction: *Provided*, That
94 compensation shall not be payable for an occupational disease or death resulting from the
95 disease unless the employee has been exposed to the hazards of the disease in the State of
96 West Virginia over a continuous period that is determined to be sufficient, by rule of the board of
97 managers, for the disease to have occurred in the course of and resulting from the employees
98 employment. An application for benefits on account of an occupational disease shall set forth the
99 name of the employer or employers and the time worked for each. The commission may allocate
100 to and divide any charges resulting from such claim among the employers by whom the claimant
101 was employed. The allocation shall be based upon the time and degree of exposure with each
102 employer.

103 (g) No award shall be made under the provisions of this chapter for any occupational
104 disease contracted prior to July 1, 1949. An employee shall be considered to have contracted an
105 occupational disease within the meaning of this subsection if the disease or condition has
106 developed to such an extent that it can be diagnosed as an occupational disease.

107 (h) (1) For purposes of this chapter, a rebuttable presumption that a professional firefighter
108 who has developed a cardiovascular or pulmonary disease or sustained a cardiovascular injury
109 has received an injury or contracted a disease arising out of and in the course of his or her
110 employment exists if: (i) The person has been actively employed by a fire department as a
111 professional firefighter for a minimum of two years prior to the cardiovascular injury or onset of a
112 cardiovascular or pulmonary disease or death; and (ii) the injury or onset of the disease or death
113 occurred within six months of having participated in firefighting or a training or drill exercise which
114 actually involved firefighting. When the above conditions are met, it shall be presumed that

115 sufficient notice of the injury, disease or death has been given and that the injury, disease or
116 death was not self inflicted.

117 (2) The Insurance Commissioner shall study the effects of the rebuttable presumptions
118 created in this subsection on the premiums charged for workers compensation for professional
119 ~~municipal firefighters; the probable effects of extending these presumptions to volunteer~~
120 ~~firefighters;~~ and the overall impact of the risk management programs, wage replacement,
121 premium calculation, ~~the number of hours worked per volunteer,~~ treatment of nonactive,
122 nonfirefighting or support functions ~~Asocial@ members of a volunteer crew~~ fire department and
123 the feasibility of combining various volunteer fire departments under a single policy on the
124 availability and cost of providing worker's compensation coverage to ~~volunteer~~ professional
125 firefighter functions in volunteer fire departments and separating individuals providing nonactive,
126 nonfirefighting or support functions in volunteer fire departments. The Insurance Commissioner
127 shall file the report with the Joint Committee on Government and Finance no later than ~~December~~
128 ~~4, 2008~~ November 1, 2016.

129 (i) Claims for occupational disease as defined in subsection (f) of this section, except
130 occupational pneumoconiosis for all workers and pulmonary disease and cardiovascular injury
131 and disease for professional firefighters, shall be processed in like manner as claims for all other
132 personal injuries.

133 (j) On or before January 1, 2004, the Workers Compensation Commission shall adopt
134 standards for the evaluation of claimants and the determination of a claimants degree of whole-
135 body medical impairment in claims of carpal tunnel syndrome.

NOTE: The purpose of this bill is relating to; define "professional firefighter" for purposes of Workers Compensation disability and death benefits and to require the Insurance Commissioner to study the effects of the rebuttable presumptions created in this section on the premiums charged for workers' compensation for professional firefighters and the

overall impact of the risk management programs, wage replacement, premium calculation for the cost providing coverage to professional firefighters and the separation of professional firefighter functions from nonactive, nonfirefighting or support functions in volunteer fire departments.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.